

DOCKET FILE COPY
ORIGINAL

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554
APR 28 4 30 PM '94

In the Matter of

Amendment of Section 22.521(b) of the Commission's Rules to amend the table of assignments for air-ground stations in the Public Mobile Service
CC Docket No. 91-121 RM 6792
CC Docket No. 92-137 RM 7859

REPORT AND ORDER

Adopted: April 6, 1994;

Released: April 28, 1994

By the Commission:

I. INTRODUCTION

1. On April 25, 1991, we released a Notice of Proposed Rule Making (Notice),¹ in CC Docket No. 91-121, seeking comments on the proposals to reassign channels in the air-ground service in Pittsburgh, Pennsylvania; Seattle, Washington; Washington, D.C.; Grand Canyon and Williams, Arizona; Newark, New Jersey; and Laurel Run, Pennsylvania. Subsequently, on July 1, 1992, we released a Notice of Proposed Rule Making (NPRM),² in CC Docket No. 92-137, which proposed allocating working channel 3 (454.850 MHz) to Schaller, Iowa. For the reasons set forth below, we do not adopt the rule proposed in CC Docket No. 92-137 as set forth in the NPRM, and we adopt in part the rules proposed in CC Docket No. 91-121 based upon comments filed in response to the Notice.

¹ Amendment of Section 22.521(b) of the Commission's Rules to Amend the Table of Assignments for Air-Ground Stations in the Public Mobile Service, 6 FCC Rcd 2238 (1991). The Notice was issued in response to a Petition for Rulemaking filed by All-American Products, Inc., May 23, 1989, and requests from Mobile Telecommunications Technologies, Corp. and the Canadian Department of Communication.

Comments, and reply comments, were filed in this proceeding by: All-American Products, Inc.; Pactel Paging; Mobile Telecommunications Technologies, Corp.; and Global-Wulfsberg Systems. Congressman Paul E. Kanjorski sent a letter after the period for commenting had passed encouraging us to reallocate a channel to the Wilkes-Barre/Scranton area.

² Amendment of Section 22.521(b) of the Commission's Rules to Amend the Table of Assignments for Air-Ground Stations in the Public Mobile Service, 7 FCC Rcd 4199 (1992). The NPRM was issued in response to a Petition for Rulemaking filed by Schaller Telephone Company, October 18, 1991. Comments in this matter were filed by Schaller Telephone Company.

II. BACKGROUND

2. Air-ground radiotelephone service in the 450 MHz band is a public radio service between base stations and airborne mobile stations. In creating the air-ground service, the Commission adopted the goal of encouraging the provision of a nationwide air-ground service utilizing the minimum amount of spectrum necessary. The Commission recognized that its allocation of 12 air-ground channels would permit nationwide service if the channels were used in sufficiently separate geographic areas.³

III. DISCUSSION

A. Canada's Request

3. The Canadian Government wrote to the Commission informing us that it was receiving interference to its Toronto facility from our allocation of channel 12 in Pittsburgh, Pennsylvania.⁴ The Canadian Government asked the Commission to consider moving channel 10 from Washington, D.C. to Pittsburgh. The Notice proposed reallocating channels as Canada requested. No comments were filed in response to the Notice.⁵ To avoid this interference problem, we hereby adopt the proposal as set forth in the Notice, move channel 10 from Washington to Pittsburgh and delete channel 12 from the Pittsburgh area.

4. In its letter, Canada also stated that it anticipated interference from channel 9 in Seattle, should that channel be activated. In the Notice, we proposed to delete channel 9 from Seattle. We hereby adopt that proposal to avoid potential interference and delete channel 9 from Seattle.

B. Mtel's Request

5. Mobile Telecommunications Technologies Corp. (Mtel) proposed moving its facility from the Grand Canyon Airport to Williams, Arizona.⁶ It proposed this change because of the inefficiency of operation at the Grand Canyon Airport. An engineering review of Mtel's proposed relocation revealed that no co-channel interference would result from the move to Williams, Arizona. We find that the public interest will be served by the change Mtel proposed. Therefore, we hereby amend Section 22.521(b)

³ Amendment of Parts 2, 21, and 87 of the Commission's Rules to Establish a Public Air-Ground Radiotelephone Service, 22 FCC 2d 716 (1969).

⁴ Letter from P. Carrey, Acting Manager, Terrestrial Services, Spectrum Management Operations, Canadian Department of Communications to W. Harris, Assistant Bureau Chief, Common Carrier Bureau, Nov. 26, 1990 (responding to a letter from W. Harris dated May 4, 1990).

⁵ The Mobile Services Division (MSD) granted special temporary authority to the Pittsburgh licensee to shift to channel 10 during the pendency of this proceeding. Letter to F. Leary, Pennsylvania Bell, from G. Vogt, Chief, Mobile Services Division, Feb. 22, 1991.

⁶ In its reply comments, filed June 25, 1991, Mtel requested that the Commission bifurcate this proceeding because there was no controversy over several portions of the proposed rule change, but there was controversy over the Laurel Run proposal. We chose not to bifurcate at that time, and we are now resolving all the issues presented in the Notice.

of title 47 of the Code of Federal Regulations to delete channel 12 from Grand Canyon, Arizona and assign it to Williams, Arizona.

C. All-American's Request

6. All-American Products, Inc. (All-American) proposed reassigning channel 9 from Newark, New Jersey to Laurel Run, Pennsylvania. All-American argued that channel 9 was not in use in Newark, but that it could be used at the Wilkes-Barre/Scranton Airport in Pennsylvania where there is no channel assigned. Pactel Paging filed comments opposing the proposal set forth in the Notice to move channel 9. Pactel argued that the Notice incorrectly assumed that the channel was not in use in the Newark area. However, Pactel points out, NYNEX filed for channel 9 in Kew Gardens, New York, less than 20 miles from Newark.⁷ Then, NYNEX transferred all of its air-ground facilities in the New York area to Pactel. Pactel is now operating channel 9 from Kew Gardens, near Newark. We will not reassign channel 9 in Newark to Laurel Run, Pennsylvania because it is currently in use. The frequency was originally assigned to Newark in anticipation of significant demand in the area. In accordance with our expectations, licensees have applied for service in those areas.

7. As an alternative, All-American proposed reassigning channel 2 from Boston to Laurel Run, Pennsylvania.⁸ Currently, there are applications pending for service on channel 2 in Boston. While we recognize that some additional service could be provided if we reallocated a frequency to Laurel Run, Pennsylvania, we originally assigned frequencies to the areas of greatest population and greatest general aviation traffic. All-American's petition and comments represent that there are approximately 100,000 airplane take-offs and landings annually in the Wilkes-Barre/Scranton airport. All-American does not refute that many of those are not general aviation flights but are commercial aviation served by a different air-to-ground radiotelephone service. Nor has All-American shown that aircraft in flight over the Wilkes-Barre/Scranton area are inadequately served by the nearby air-ground station. Channel 2 was originally assigned to Boston in anticipation

of substantial demand for service there. For these reasons, we find that All-American has not justified our reassigning channel 2 from Boston to Laurel Run, Pennsylvania. Therefore, we deny All-American's request for a reassignment of channel 2 from Boston.⁹

D. Schaller's Request

8. Schaller Telephone Company (Schaller) requested that we assign channel 3 to Schaller, Iowa. Schaller's petition for rulemaking stated that there would be no co-channel interference problems posed by this allocation,¹⁰ and the NPRM proposed the requested channel assignment. However, Schaller, in its petition and comments, failed to note that channel 3 was already allocated 200 miles away in Minneapolis. Based on its submissions, we are not convinced that Schaller can show interference-free operation vis-a-vis the pending operation in Minneapolis. Our table of allocations does not currently allocate co-channel stations within 400 miles of each other (most co-channel allocations maintain a separation of greater than 500 miles). As noted above, the proposed allocation to Schaller is merely 200 miles from the co-channel allocation in Minneapolis. Analysis by Commission engineers indicates that 200 miles is too close to ensure interference-free operation between co-channel stations.¹¹ Schaller indicated that the nearest co-channel station was in service more than 500 miles away, which provided sufficient separation to avoid interference problems.

9. Schaller erred in confusing licensed operation of a channel with allocation of a channel. Channel 3 was not licensed in Minneapolis, although it was allocated there. Moreover, before the NPRM was adopted Pactel Paging had filed an application to provide service on channel 3 in Minneapolis. That application is pending, as are applications from four other applicants for channel 3 in Minneapolis. Consequently, Schaller's statement, that the minimum distance channel separation requirement is met, is incorrect. Therefore, we find that the public interest would not be served by granting Schaller's request. We will not allocate channel 3 to Schaller, Iowa.¹²

⁷ Section 22.521(b) provides, in part, "Base stations may be assigned the following channels and shall be located within 25 miles of the coordinates specified, or if none, the main post office...." 47 C.F.R. § 22.521(b).

⁸ As required by the Notice, All-American made this alternative proposal in its comments. The Commission issued a subsequent Public Notice announcing All-American's proposal to move channel 2 from Boston. All parties then had an opportunity to comment on the alternative proposal, which All-American and Pactel did.

⁹ Reply comments were filed in this rulemaking proceeding by Global-Wulfsberg Systems (Global). Global's pleading supports the provision of air-ground service in the Wilkes-Barre/Scranton area because it believes there is unmet demand for service. Yet, Global's observation of unmet demand for service is unsubstantiated by any evidentiary showing.

¹⁰ Schaller, Petition for Rulemaking, filed Oct. 18, 1991, at 3-4.

¹¹ In the Commission's rulemaking proceedings leading to implementation of the air-to-ground service, the Commission determined that 500 miles was the appropriate distance for co-channel separation. Amendment of the Commission's Rules to establish a public air-to-ground service, Notice of Proposed Rulemaking, FCC 62-457, Docket 14615, RM 308, released May 4, 1962. In the rules proposed in the NPRM, the Commission set forth a table of assignments for channels in cities across the

country which proposed allocations that were in accordance with the separation requirements the Commission proposed. Despite the Commission's failure to adopt the proposed amendments to the rules set forth in that rulemaking, in a subsequent proceeding the Commission adopted approximately the same table of allocations for the air-to-ground service. Amendment of Parts 2, 21 and 87 of the Commission's Rules to Establish a Public Air-Ground Radiotelephone Service, 22 FCC 2d 716, 729 (1969). By adopting the same table of allocations, the Commission implicitly adopted the same rationale which it set forth in the earlier NPRM. The Commission has never strayed from the position that there is a need for substantial co-channel separation to protect interference free operation. In fact, the current proposal to amend Part 22 of the Commission's rules ratifies the need for 497 mile co-channel separation in this service. Revision of Part 22 of the Commission's Rules, Notice of Proposed Rulemaking, 7 FCC Rcd 3658, 3730 (proposed rule § 22.813(a)) (1992).

¹² We note here that Schaller could have filed to reallocate channel 3 since it was already allocated to Minneapolis according to our Rules, 47 C.F.R. § 22.521(b). Despite the fact that there was no licensee operating on that channel in Minneapolis at the time Schaller filed its request, the channel was allocated

IV. ORDERING PARAGRAPHS

10. Authority for the rule changes adopted herein is contained in Sections 1, 4(i), 4(j) and 303(r) of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r).¹³

11. IT IS HEREBY ORDERED THAT Section 22.521(b) of the Commission's Rules IS AMENDED to reflect the channel assignments set forth in the Appendix to this Order, consistent with the terms of this Report and Order.

12. IT IS FURTHER ORDERED THAT CC Docket No. 91-121 and CC Docket No. 92-137 ARE HEREBY CONCLUDED.

13. IT IS FURTHER ORDERED THAT the rule changes made herein WILL BECOME EFFECTIVE 60 days from the date of their publication in the Federal Register.

14. For further information, contact James S. Gumbert ((202) 632-0914), Mobile Services Division, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary

APPENDIX

Part 22 of Title 47 of the CFR is amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. §§ 154, 303.

2. Section 22.521(b) is amended by revising the entries for Seattle, Washington; Pittsburgh, Pennsylvania; Grand Canyon, Arizona; and Williams, Arizona to read as follows:

22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

| Location | Channel |
|-----------------------|---------|
| * * * | |
| Arizona: | |
| Phoenix | 2, 8 |
| Williams | 12 |
| * * * | |
| District of Columbia: | |
| Washington | 1, 7 |
| * * * | |
| Pennsylvania: | |
| Pittsburgh | 4, 10 |
| * * * | |
| Washington: | |
| Seattle | 1, 2, 5 |

and available for licensing in Minneapolis. We do not generally reallocate a channel to a new location when there are applications for the frequency where it was originally allocated.

¹³ Both Notices of Proposed Rule Making, CC Docket No. 91-121 and CC Docket No. 92-137, certified that the provisions of the Regulatory Flexibility Act are not applicable to the changes being proposed in these proceedings. Additionally, the

new rules do not impose a new or modified information collection requirement on the public requiring approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act of 1980.